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AND NON-TARIFF REGULATIONS (PART 2 OF 3)

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Classified By: A/DCM Susan Elliott, Reasons 1.4 b&d.

11. (U) Introduction: This cable is the second in a three-part series presenting major features of the Russia, Belarus, Kazakhstan Customs Union (RBKCU), finalized on November 27 with the signing of most binding agreements. This cable reviews the principal points regarding tariffs and non-tariff regulations. The first cable covered the major structure and decision-making process of the RBKCU (ref A). The third cable will discuss how the RBKCU could potentially affect Russia's WTO accession. End Introduction.

#### Tariff Procedures

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12. (U) The RBKCU Commission, which is the single permanent regulatory body of the Customs Union and is composed of a representative from each member government (ref A), is in charge of keeping and amending the harmonized RBKCU tariff table. The Commission will meet quarterly to make decisions on customs and tariff regulations. The majority of these decisions will be made by a two-thirds majority of votes (see para 13 for exceptions). All RBKCU Commission decisions will be published on the Custom Union's website ([www.tsouz.ru](http://www.tsouz.ru)) upon approval. Decisions of the Commission come into effect at least one month after their official publication and remain in force unless the Commission or the Interstate Council of Eurasia Economic Community (EurAsEc), the supreme body of the RBKCU (ref A), takes action to supersede the Commission's decision. Tariffs, while listed in Euros on the table, will be calculated and paid in the currency of the country where the goods enter.

13. (U) Each country will keep its own tariff commissions, which will continue to consider requests for tariff changes and safeguards. (Note: For Russia this is the commission headed by Deputy PM Zubkov, aka - the Zubkov Commission. End Note.) The recommendations on overall tariff changes will go to the RBKCU Commission for approval. Through the national

tariff commissions, a RBKCU member may also ask the Commission for a higher, protective duty rate just for its country if a member government believes this is necessary for the development of a branch of its economy. A member may also request a lower duty rate just for its country in the case of an acute shortage of goods, particularly if essential for "meeting socially important needs of the population or production development needs." In addition, the member must show that production of the same or similar goods within the RBKCU cannot meet this need.

¶4. (U) In the case of individual country requests for tariff changes, the Commission will send out the proposal to other members for comment. The Commission has 30 days from receipt of the request to make a decision. The Commission generally requires a consensus to allow the member to introduce a higher or a lower duty rate, provided that the member's request has been properly substantiated and that other members do not want to take on such a tariff change as well. The term of the higher or lower duty rate approved by the Commission shall not exceed six months and may be extended if the interested party submits a proposal at least one month before the measure expires. In some undefined "emergency situations", Customs Union members can apply protective tariffs on selected goods without the consent of the other members, but only for six months per year and for a maximum of five years. The member states have agreed to grandfather in all previously existing protective and anti-dumping measures at the time of accession into the RBKCU. (Note: Current safeguards investigations will remain within the purview of each country. While the objective is to migrate these decisions to the RBKCU commission, no date has been set for the transfer. End Note.)

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#### The RBKCU Harmonized Tariff Table

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¶5. (SBU) The harmonized tariff table contains over 11,000 lines, 80% of them ad-valorem tariffs. According to a December 7 presentation by Senior Russian Trade Negotiator Maxim Medvedkov, the harmonization process has only resulted in a small number of increases to Russia's tariffs, most in the area of meat and food products. All other tariffs will be lower. He stated that this harmonized table represents a 1% decrease in the effective real tariff for Russia in comparison to 2009. And, he added, even with the GOR's anti-crisis measures, Russia's real effective tariff rate in 2009 was lower than 2008. Therefore, Medvedkov believes this harmonized tariff table represents real, increased market access for foreign goods. (Note: This statement however, does not take into account that the real effective tariff in 2009 was lower due to a decrease in world trade. The better comparison would be with the real effective tariff of 2007, which MED did not provide. End Note.) Medvedkov added that the "few" anti-crisis measures taken so far are temporary and will be removed "when the circumstances allow." (Note: Our review of two specific cases reveal that this is not altogether true - See para 8. End Note.)

¶6. (SBU) According to Medvedkov, the country most affected by the harmonized tariff rates is Kazakhstan, whose real effective tariff rate will go up, as it had to raise tariffs on over 3,000 tariff lines. According to Medvedkov, Kazakhstan did receive some tariff exemptions for periods of one to five years, and some permanent exemptions (see para 17). Kazakhstan also lowered over 3,000 tariff lines. (Note: The full tariff table can be found, in Russian, on the RBKCU web site ([www.tsouz.ru](http://www.tsouz.ru)). End Note.)

¶7. (U) For the moment, each country will keep its own export tariffs, but the objective is to harmonize those as well. While some early press reports stated that the harmonized export tariffs would go into effect on January 1, 2011, Russian trade negotiators indicated that these discussions are set for an unspecified date in the future. As well, a

separate agreement on duties to be paid by individuals importing single vehicles for sale, as well as other goods such as alcohol, tobacco, and home appliances is still pending discussion and approval by the RBKCU Commission.

#### Specific Tariff Cases

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**¶8.** (SBU) A review of the RBKCU tariff table reveals that some of Russia's recent protectionist "temporary" tariff increases have now been transferred into the harmonized tariff table. One case was the increase in the tariff on trucks to 25%, which practically stopped all trade in large, industrial off-highway trucks, which Russia does not produce. Prior to Putin's RBKCU announcement on June 9, Russia had agreed to create special tariff lines for different types of large trucks, so the tariffs on them could be reduced, while the overall truck tariff remained in place. The new tariff lines did make it into the harmonized tariff table, with some, (8704 10 1012) and (8704 10 1010), receiving a 0% and 25% tariff respectively. However, the higher tariff on the largest off-highway trucks, involved in mining and oil exploration (8704 10 1029), will remain in the harmonized code for the time being because Belarus is strongly opposed to decreasing it. A more negative example is the wholesale transfer of the "temporary" increase of tariffs on combines to 15%, but no less than 120 Euros per kilowatt of engine capacity, thereby making it permanent in the harmonized table.

#### Treatment of Meat ) Tariff Rate Quotas

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**¶9.** (U) The RBKCU Commission is also charged with introducing Tariff Rate Quotas (TRQs). The quantities allocated for Russia in the RBKCU tables are global; however, the RBKCU documents note that the issue of the country specific allocations, "if necessary," should have been distributed within two weeks of November 27. The TRQ volumes are significantly less than the 2009 pork and poultry volumes, but identical to the total 2010 figures in Russia's September

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draft decree on the "import of beef, pork and poultry meat in 2010-2012." In-quota duties remain the same, 15% for beef and pork, and 25% for poultry. Out-of-quota duties for beef and pork are also unchanged at 50% and 75% respectively. The poultry out-of-quota duty has been reduced from 95% to 80%, which is still viewed as prohibitive for U.S. poultry.

**¶10.** (U) Post believes Russia will announce country specific allocations similar to their September draft decision. The agreements also instructed RBKCU members to issue licenses starting December 15, and in a manner consistent with each country' laws. This start date has slipped with the only explanation from Russian officials being &this year is complicated.<sup>8</sup> Post and industry contacts attribute the delay to internal disputes regarding country allocations and future TRQ quantities. (note: Russia published its met tariff quotas on December 21. Post will report septel.)

**¶11.** (U) As in the past, high-quality beef does not count against the TRQ quantities but receives a duty identical to the in-quota rate of 15%. The beef qualifying for this benefit, however, has become more restrictive. Previously meat with a value of "not less than 3,000 Euros per 100 kg." would qualify. The new standard applies to beef with a value "not less than 8,000 Euros per 100 kg."

**¶12.** (SBU) According to information available to us in Moscow, there are no poultry or beef allocations for Belarus. While the U.S. currently does not export meat or poultry to Belarus because of sanitary-phytosanitary (SPS) restrictions, market potential would exist if Belarus were to adopt a WTO consistent SPS regime. Interestingly, on December 11 the Heads of State Commission met and approved an agreement establishing "mutual recognition of accreditation of certification bodies for testing laboratories that perform

work on conformity assessment, as well as sanitary, veterinary-sanitary measures and plant quarantine." This may mean, that for the time being, the RBKCU will not provide U.S. agricultural exporters with more access to the Belorussian market.

¶13. (C) Comment: The provisions regarding the meat TRQs are among the most contentious. As stated earlier, while the quantity of the meat and poultry TRQs were anticipated, the provisions specifying the country allocations were not included in the document. Draft TRQ documents with the proposed country allocation not only contain a proposal for 2010 parameters but also attempt to solidify the volumes for 2011 and 2012. End Comment.

#### Exceptions

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¶14. (U) The RBKCU agreements contain a list of sensitive items, which will require a consensus decision (vs. two-thirds vote) from the Commission to change tariffs for these items. The list is extensive, covering goods from 68 (out of 97 total) two-digit HS code groups. The most affected groups include: organic chemicals; nuclear reactors, boilers, machinery and parts; prepared vegetables, fruit, nuts, or other plant parts; electric machinery; plastics; vehicles and parts; inorganic chemicals, precious and rare metals, radioactive components; fish; and meat.

¶15. (U) The RBKCU also has a list of goods with restricted movement across the Customs Union border. This list includes restrictions on the export of obvious goods such as wildlife, poisons, and cultural property. However, it also includes restrictions on imports of goods such as pharmaceutical substances; veterinary medicine; non-military, radio-electronic and high frequency devices; technical equipment intended for gathering of information; ethyl alcohol and alcoholic products; and encryption means (see para 17).

¶16. (U) According to the RBKCU documents available to us in Moscow, Kazakhstan will retain some flexibility in determining its common external import tariff regime. Over 400 specific commodity items, covering some 11 two-digit Harmonized System code groups of goods will be subject to a

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transitional period varying from eighteen months to six years. These items include plastics; optical, medical/surgical instruments; pharmaceuticals; electric machinery, sound and TV equipment; aluminum; and paper and cardboard products. As well, Kazakhstan will have no tariff on over 900 specific commodity items including modern aircraft; certain types of engines; and raw materials needed in the food processing industry, such as tropical fruits (ref B).

#### Cryptographic Goods

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¶17. (SBU) A company currently importing cryptographic goods into Russia will find little to no difference under the RBKCU, as the basic principles for their importation will not change substantially. National legislation and national license issuers will remain the primary source of regulation for cryptographic goods. Current licenses issued in Russia will remain valid under the RBKCU. According to Russian trade negotiators, renewal procedures and licensing agencies in each country will not change. Enforcement, however, will be a question as regulations are not uniform in each country, and it is still unclear whether customs officials will be authorized to enforce the laws of the other member countries.

#### Processing Goods and Special Economic Operators

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¶18. (U) The Customs Code, which governs the conduct of customs activities, will not come into force until July 1,

¶2010. The Code increases the duty payment period from 15 days to four months, reduces the period for completing a customs declaration from three to two days, but increases the time for customs clearance from three to 10 days. The declarer will be able to make any changes in the customs declaration before and after the release of the goods. The Code also creates a category for "Special Economic Operators." These are companies that, after an application process and payment of a "guarantee," will have the right to a "facilitated customs clearance and control scheme." These operators will also have the right to store goods in their own warehouses while conducting customs procedures.

#### General System of Preferences

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¶19. (U) The RBKCU will replicate Russia's Generalized System of Preferences (GSP) in favor of developing and least developed countries. According to the RBKCU system of tariff preferences, the Commission develops and keeps the list of goods originating and imported from developing and least developed countries, which will receive tariff preferences. This list will not account for more than 20% of the total number of the harmonized tariff subheadings. If necessary, the Commission may establish an additional list of goods subject to the RBKCU tariff preferences, which cannot be more than 5% of the total number of harmonized tariff subheadings. Developing countries that are eligible for the RBKCU tariff preferences will pay 75% of the rates on the harmonized tariff table, while least developed countries will enjoy a duty free regime for specified imports.

¶20. (SBU) The products receiving preferences are mostly raw materials and food stuffs (such as meat, poultry, dairy, grains, textiles, wood products, and construction materials), and some light industrial production. For purposes of the GSP, the RBKCU considers countries such as Argentina, Brazil, Hong Kong, South Korea, Chile, China and Saudi Arabia as developing countries. We note that none of the CIS countries are eligible for these GSP preferences. While these countries do have FTAs with Russia, it is as yet unclear how the RBKCU will affect the FTAs as they are not mentioned anywhere in the RBKCU documents.

#### Pending Items

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¶21. (U) Over the next few months, the RBKCU Commission will continue work on new agreements on harmonized technical regulations, sanitary and phytosanitary standards (SPS), and other regulatory systems. During a December 7 presentation

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to foreign embassies, Russia's Senior Trade Negotiator Maxim Medvedkov noted that an RBKCU group of experts would review existing SPS regulations in each country and determine which measures and regulations need to be changed in order to create a harmonized document. During the December 11 RBKCU meeting, the Heads of Government approved agreements which set a deadline of April 1, 2010 for submission of proposals for harmonized SPS regulations and procedures, and an intention to have these enter into force on July 1, 2010. On December 18, the RBKCU signed a preliminary agreement setting out the operation of a transition period before adoption of SPS harmonized regulations. The members also discussed a common economic zone that removes all technical, sanitary and other non-tariff barriers between the three countries.

(Note: In November, President Medvedev proposed that Russia recognize all of the EU's regulations and standards as a way of reducing the work of bringing Russia's, and presumably the RBKCU's regulations up to international standards. A bill to this effect was introduced into the Russia Duma on December 16. End Note.)

Comments ) We Have Several Concerns

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¶22. (C) One of the first areas of concern as we reviewed the RBKCU documents is that if companies or foreign governments

want to lobby for tariff reductions, the RBKCU structure essentially requires that the petitioner lobby three governments simultaneously. In addition, the large number of tariffs that require consensus votes means that importation of goods in these categories will depend on the whims of the RBKCU Commission. This is worrisome given, at least on the Russian side, the capricious and arbitrary way in which the national commission approves protectionist tariffs. The formal RBKCU appeals structure (ref A) only exists on paper so far, and is more focused on providing a venue for appeals from RBKCU member countries than from economic operators.

**¶23. (C)** The RBKCU documents also lack any serious, comprehensive discussion on issues of regulation and enforcement of SPS standards, intellectual property protection, licensing for cryptographic imports, etc. This, combined with the delayed implementation of the harmonized Customs Code (until July 1, 2010), raises serious concerns about how customs officials in the RBKCU will enforce regulations and licenses of three different countries. One Russian trade expert, Galina Baladina, former Director of the Ministry of Economic Development's Department of State Regulation and External activity and Customs, is also concerned that the RBKCU broadens the authority of customs services disproportionately, while not providing enough legal guarantees for businesses. Could customs officials in all three countries have access to the necessary information from the other member countries and would they be able to enforce it fairly and effectively? When asked about this weakness in the enforcement structure, Russia's lead RBKCU negotiator, Andrei Tochen, could only respond "well, as you know, customs officers cannot enforce the laws of other countries." (Note: Post will discuss the RBKCU's effects specifically on intellectual property enforcement septel. End Note.)

**¶24. (C)** The fact that the RBKCU is being implemented without every single trade issue officially harmonized and agreed to, means that local laws and regulations will continue to operate in parallel. For importers trying to bring products into the RBKCU, this will only increase their administrative burden. Complicating matters further, when a harmonized position does exist, but is preliminary and generalized and contradicts local regulations, there is no clear method for determining which regulation takes precedence. Russian trade officials claim that in places where the RBKCU regulations contradict Russian laws, the RBKCU agreements, as international treaties, would take precedence. We did not find such a statement, however, in the RBKCU documents.

**¶25. (C)** In our estimation these areas of concern leave serious gaps that unscrupulous traders and government officials can exploit. The traders can use the inconsistencies in regulations to find alternative ports of entry for their goods. On the government side, trade

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officials can use the ambiguity regarding which laws and regulations take precedence to cherry pick which rules most benefit their country. As well, protectionist tendencies within the RBKCU will be favored over increased liberalization of trade, as once tariffs are raised, they will be harder to reduce.

**¶26. (C)** That said, Maxim Medvedkov has repeated publicly that the RBKCU is an evolving project that will continue to change. This is a basic admission that they were not able to cover all issues necessary to create a fully operational customs union in six months, and will need to continue to address issues, probably on the basis of their urgency. This provides a possible opening for foreign companies and governments to influence changes in regulations that would increase access and, possibly, make some regulations less burdensome.

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